

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

JOSEPH SHAWN RALEIGH,	:	APPEAL NO. C-110225
	:	TRIAL NO. DR-1001486
Plaintiff-Appellee,	:	
	:	JUDGMENT ENTRY.
vs.	:	
KRISTEN M. RALEIGH,	:	
	:	
Defendant-Appellant.	:	
	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

In 2005, defendant-appellant Kristen M. Raleigh gave birth to a child who had been conceived as the result of a sexual assault. Due to the nature of the assault, Kristen did not know the identity of the father. The child was born in Florida, where Kristen was completing her university coursework. The Florida birth certificate listed no father.

After graduating, Kristen returned to the Cincinnati area to live with her parents and began working at an area bank. Plaintiff-appellee Joseph Shawn Raleigh also worked at the bank, and the two began dating. The couple married shortly thereafter. After their marriage, the couple completed a Florida document entitled “Acknowledgement of Paternity,” in which they listed Joseph as the father and changed the last name of the child to Raleigh. When the form was completed, both parties knew that Joseph was not the biological father of the child.

Four years later, the couple separated, and Joseph filed a complaint for divorce. While his initial filings did not reference the child, Joseph’s complaint was later amended to list the child at issue in this case. After the trial court issued its

initial Civ.R. 75(N) order, Kristen contested the order. She claimed that Joseph was not the child's father and that the child was, therefore, not a proper subject of the litigation. She also sought to rescind the paternity acknowledgement. The magistrate denied the request to rescind, and the trial court overruled Kristen's objections to that decision. Three months later, Kristen filed a motion for relief from judgment, which was also denied by the trial court. In three assignments of error, Kristen now appeals.

In her first assignment of error, Kristen claims that the decision denying her request to rescind the paternity acknowledgement was improper because there had been a material mistake of fact. Under both Florida and Ohio law, such a finding is required in order to rescind the acknowledgement of paternity once it has been executed and become final. *See Fla.Stat. 742.10(4); R.C. 3111.28.*

Both parties agree that the legal standard is whether there was a material mistake of fact. But they disagree over whether there actually was a mistake at all. During the hearing before the magistrate, two very different versions of events were presented. According to Kristen, she and Joseph had no idea that completing the Acknowledgement of Paternity would result in Joseph becoming the legal father of the child. She testified that she had contacted officials in Florida asking how she could change the child's last name to match her married name. As a result, she received the form that the couple completed and returned. She also denied seeing the back of the form which explained that the purpose of the form was to establish paternity. When she saw that the revised birth certificate listed Joseph as the father, she was not concerned about it because she knew "that [Joseph] is not his father, so why just because some piece of paper says so?"

Joseph's version of events differed significantly. He testified that the purpose for completing the form was to create a family unit. The couple did not want the child to learn the story of his conception, so they chose to execute the

Acknowledgement of Paternity, rather than go through an adoption process that would result in a paper trail that could be discovered when the child grew up. He said that the couple had actually completed the form twice. The first time, the form had been rejected by Florida because of a defect with the notarization. He said that Kristen had become very upset over it because she had wanted the child to have a father and a family. He also said that the couple had read the back of the form, and even remarked that the two of them joked about some of the things discussed on it such as the requirement to pay child support.

The decision of the court below demonstrates that it found Joseph's version of events more credible, and noted that

[e]ven if this court accepts, *arguendo*, that wife was mistaken as to the impact that the Acknowledgement of Paternity form [had] when she signed it, the clear language of the Acknowledgement of Paternity form, which she signed, makes it clear that her "interpretation" as to the effect of the document was not reasonable.

The form was titled "Acknowledgement of Paternity," the line where Joseph's name appears asked for the "Natural Father's Full Name," the rest of Joseph's information was listed on lines asking for information about the "father," and he signed on the line asking for the signature of the "natural father." The form was completed, signed, and the signatures were notarized pursuant to the instruction in bold at the top requiring that it be "signed by both the mother and the father in the presence of a notary public." The "Acknowledgement by Natural Parents" section stated that

Under penalties of perjury, we hereby declare that we have read the foregoing Acknowledgement of Paternity and that the facts stated in it are true, that is, that the mother was unwed at the time of birth, that no other man is listed on the birth record as father, that we are the natural parents

of the child named above and that we fully understand our responsibilities and rights printed on the reverse side of this form.

The magistrate referenced this language when he indicated that he disbelieved Kristen's assertion that she had not read the explanatory language on the reverse side of the document, noting that "under penalty of perjury Wife acknowledged she had read the additional form. Wife's current position would seem to indicate she is guilty of perjury."

After hearing the testimony, and reviewing the document that the parties executed, the trial court concluded that Joseph's version of events was more credible and that the parties had intended him to become the father of Kristen's child. A reviewing court presumes that the factual findings of the trial court are correct because the trial judge had an opportunity "to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Lucero v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 11AP-288, 2011-Ohio-6388, ¶ 16, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984). "If the evidence is susceptible to more than one interpretation, we must give it the interpretation consistent with the trial court's judgment." *Cent. Motors Corp. v. Pepper Pike*, 73 Ohio St.3d 581, 584, 653 N.E.2d 639 (1995).

Within this argument, Kristen notes that the reverse side of the form was not signed by the parties and, without further argument, asserts that the filing was "incomplete, void, and voidable and the Florida Department should next strike it from its records." But we have found no authority in Florida law or its applicable regulations that would indicate that anything other than the execution of the document itself is required in order for the form to be effective. This conclusion is buttressed by the fact that the only signatures requiring notarization appear on the front of the form, not at the bottom of the second page as one would expect if both sides of the form were required.

As the trial court concluded that there was no material mistake of fact, and the record supports that conclusion, we overrule Kristen's first assignment of error.

In her second assignment of error, Kristen argues that the trial court abused its discretion when it denied her motion for relief from judgment pursuant to Civ.R. 60(B). To prevail on a 60(B) motion, the moving party must establish that it has a meritorious defense or claim to present if relief was granted; it is entitled to relief under one of the grounds set forth in Civ.R. 60(B)(1) through (5); and the motion was made within a reasonable time. *GTE Automatic Electric, Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976). A trial court's decision on a motion for relief from judgment is reviewed on an abuse-of-discretion basis. *Watts v. Forest Ridge Apts. & Town Homes*, 1st Dist. No. C-060079, 2007-Ohio-1176, ¶ 8, citing *Strack v. Pelton*, 70 Ohio St.3d 172, 174, 637 N.E.2d 914.

Kristen sought relief based upon Civ.R. 60(B)(2), claiming newly discovered evidence. Kristen argued that she was entitled to relief from judgment because she was able to procure a true copy of both sides of the Acknowledgement of Paternity form, and it revealed that the couple had not signed the reverse side which explained the effects of the form. She argues that she had testified that she had not seen or signed the reverse side, while Joseph had testified that the form had been seen and signed. Thus, she asserts, allowing Joseph's testimony "to remain on the record would allow him to perpetrate a fraud upon the court."

The trial court rejected this argument, finding that the form was not newly discovered evidence. It concluded that the second page was "merely a description of the rights and responsibilities that follow from the execution of the first page, and thus does not persuade this Court to believe that because the parties did not sign it, the parties did not intend to effectuate the acknowledgement process." On this record, we find no abuse of discretion.

Alternately, we note that evidence which serves only to impeach the credibility of witnesses will not form the basis for relief from judgment under Ohio R. Civ. P. 60(B)(2). *See Stanley v. Stanley*, 9th Dist. No. 16093, 1993 Ohio App. LEXIS 4598 (Sept. 15, 1993). Kristen argues that the evidence was necessary to impeach Joseph's testimony in which he said that they had signed the form. As such, the document did not warrant relief from judgment. Kristen's second assignment of error is overruled.

In her final assignment of error, Kristen argues that the trial court incorrectly determined that the record "established that [Joseph] acted and participated as the *de facto* father to this child for most of the child's life." But Joseph testified that he was actively engaged as the child's father. While Kristen's testimony differed, it was not an abuse of discretion to credit Joseph's testimony over hers. Kristen's third assignment of error is overruled.

Having considered and rejected each assignment of error, we affirm the decision of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

DINKELACKER, P.J., CUNNINGHAM and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on May 30, 2012
per order of the court _____.
Presiding Judge